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RALPH E. JOCKE
231 SOUTH BROADWAY
MEDINA, OH 44256

EXAMINER

BUTLER, MICHAEL E

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 05272004

Application Number: 09/086,857
Filing Date: May 29, 1998
Appellant(s): FREDERICK ET AL.

MAILED

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GROUP 3600

Ralph E. Jocke
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/27/2004

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. The appellant's brief states contains a statement identifying related appeals or interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is substantially correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the first paragraph of section (4) of the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The applicant's brief includes a statement of the issues.

However, the appellant's statement of the issues in the brief are broadly correct as summarizing the claims' status. However, the statement of issues fails to detail the factual and legal issues determinative on the status of the claims.

Does a reference receive the effective 102(e) priority date benefit for matter mutually disclosed in an earlier claimed application if one of the claim links is merely a CIP link?

Does the subject matter of a dependent claim inherit the invention date of the base claim?

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If the subject matter of a dependent claim would have been obvious to invent, may a dependent claim inherit the invention date of the base claim for invention elements subsequently combined with the base claim elements?

Whether there is antecedent basis in the claims for “the determination that the medical item is stored in the interior area” in claim 27.

Whether “the other location” specifies a definitive single location or plural locations.

Whether “door controls access” definitively identifies an administrative control, physical control or some other control of access.

Whether Lavigne is operated from an authorized user.

Whether the user administering the records and updating medical records in Colson ‘450 is an authorized user.

Whether a nurse entering a Password in Pearson ‘232 is an authorized user.

Whether in Higham et al. patient specific dispensing constitutes an authorized user.

Whether a memory store of users in Colson ‘297 are authorized users.

Whether claims in which applicant has petitioned from restriction as being patentably distinct from the elected claims are obviated by art reading on the elected claims.

Whether a location visual indicator proximate a lock is Higham et al. or Lavigne or Colson ‘450 or Colson ‘297 are suggestive of a visual indicator located on the lock.

Whether one of ordinary skill in the art would substituting a solenoid with magnets in place of one with plural windings was in the skill of one in the arts of ordinary skill.

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Whether the Blechl system's card access preferred embodiment and password and personal computer control comprises authorized users.

Whether a refrigerated dispensing system as in Lavigne reading medical items from a reader on a medication dispensing system could be applied to a refrigerated system by one of ordinary skill in the art.

Whether the Computer controlled dispensing of Colson '450 would suggest placing the lock under computer control by Iwamoto to one of ordinary skill in the art.

Whether the modular lock of Iwamoto could be applied to a refrigerated device such as Lavigne.

Whether the reader of Genest qualifies as a reader for machine readable indicia in Lavigne.

Whether the door sensor of Holmes could be applied to a refrigerated medication dispensing system.

Whether the lock morule of Warren can be placed on the exterior of a refrigerator.

Whether a lock timeout module in medication dispensing system such as Holmes can be applied to a refrigerated dispensing system such as Lavigne

Whether an identified user in Halvorson obviates an authorized user.

Whether an authorized user in McDonald '243 may be applied to an identified user in Halvorson.

Whether an indicator light and door and lock sensors in Weinberger teach signaling responsive a door and lock condition.

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(7) *Grouping of Claims*

Appellant's brief includes a statement that no claims may be grouped together.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

5,572,873	Lavigne	11-1996 (filed 3-1995)
5,520,450	Colson, Jr. et al.	5-1996 (priority 1-1993)
4,847,764	Halvorson	7-1989
5,805,456	Higham	7-1994 (priority ?-199 ?)
5,377,864	Blechl et al.	3-1995 (3-1992 filing)
5,562,232	Pearson	10-1996 (priority 8-1991)
5,292,029	Pearson	3-1994 (filed 8-1991)
4,674,652	Aten et al.	6-1987
5,346,297	Colson, Jr. et al.	9-1994 (filed 1-1993)
5,408,443	Weinberger	4-1995
5,781,442	Engleson	7-1998 (filed 5-1995)
5,225,825	Warren	7-1993

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6,039,467	Holmes	3-2000 (12-1996 priority)
4,857,716	Colson, Jr. et al.	8-1989
4,125,008	Genest	11-1978

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 27-43 are rejected under 35 U. S. C. 112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is insufficient basis in the claim(s) (Re: cl 27) for the limitation “the determination that the medical item is stored in the interior area”

(Re: cl 31) There are a plurality of locations that might be described as “other locations” with no way of distinguishing which one is the “other” being specified.

(Re: cl 36) It is not apparent how the door controls the access.

Claim Rejections - 35 USC § 102

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3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1, 3, 9, 27, 44, 31, 32, 33, 36, 37, 38, and 24-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Lavigue et al. Lavigue et al. discloses: (re: cl 1, 24) a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 10 L 27-61, the supervisor id is recognized , compared and the computer is operable contingent upon that comparison (col. 6 L 20-59); the interface includes an input device (col. 5 L 50-65); a refrigerator wherein a storage location for at least one medical item is located in an interior area of the refrigerator, the refrigerator including a door (col. 7 L 36-52); a lock module operatively attached to the refrigerator, the lock responsive to the computer (col. 11 L 39-43); the input device of the interface

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corresponding to the data representative of an authorized user stored in the data store (col. 10 L 27-39), the computer enabling user to input indicia corresponding to the medical item (col. 9 L 17-34), the computer operative to output a signal which changes the lock (col. 11 L 39-43; col. 8 L 59-62); computer is operative responsive to input of the item indicia to unlock the module (col. 8 L 24-30; col. 8 L 58-59).

(Re: cl 3) door is operative to generate an open signal responsive to the door opening

computer is operative to the open signal to change the lock module to the locked condition (col. 6 L 47-56); the computer operative responsive to the lock condition to change the condition of the lock (col. 8 L 60-62; Fig. 5, #113; Fig. 3, #118 & 139; (re: cl 25) door sensor, a latching device for selectively maintaining the lock module in the locked and unlocked conditions (col. 6 L 47-56; col. 7 L 10-35);

(Re: cl 9) door opening sensor signaling data store (col. 6 L 47-56);

(Re: cl 27, 44) attaching a lock module to a refrigerator, placing a medical item in the interior or the refrigerator door (col. 7 L 36-52), storing data associated with the medical item, imputing medical item type, determining type of medical item in interior, generating signal determinative that a medical item is stored in the interior, enabling access to the interior of the computer (col. 7 L 36-52);

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(Re: cl 31) placing medical items in plurality of storage locations, at least on in the interior and at least one exterior and storing data representative of the medical items stored (col. 9 L 17-34);

(Re: cl 32) the first item is placed in the storage location in the interior and a second item is placed in the other locations (col. 7 L 36-52),

(Re: cl 33) other location is in dispenser, inputting the type of item stored, determining that the second type of medical item is store in dispenser, generating a second signal responsive to the determination second type is in dispenser (col. 6 L 20-59);

(Re: cl 36) opening refrigerator door, sensing door opened (col. 6 L 47-56; col. 7L 10-35);

(Re: cl 37, 42) storing authorized users, comparing whether authorized user as a contingency to opening refrigerator (col. 10 L 27-39),

(Re: cl 38,43) data stored representative of an authorized user (col. 10 L 27-39);

5. Claims 1, 4, 12-15, 21, 24, 27-29, 31-33, 39 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Colson, Jr. et al. '450. Colson, Jr. et al. '450 discloses: (Re: cl 1, 24) a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 5 L 17-29; Fig. 1, #21); the interface includes an input device (col. 5 L 17-29); a

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refrigerator wherein a storage location for at least one medical item is located in an interior area of the refrigerator, the refrigerator including a door (col. 3 L 1-16; col. 6 L 32-67; Fig. 1, #25); a lock module operatively attached to the refrigerator, the lock responsive to the computer (col. 2 L 50-55; col. 5 L 20-25; col. 6 L 48-67); the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item (col. 5 L 20-40), the computer operative to output a signal which changes the lock (col. 5 L 20-25) the computer is operative responsive to input of the item indicia to unlock the module; computer is operative to the open signal to change the lock module to the locked condition (col. 6 L 47-56);

(Re: cl 4) lock has manual unlocking mechanism armed to unlock when the lock is enabled (c4 L 65-c5L 15)

(Re: cl 12) lock module mounted in support of external surface with of refrigerator bolt (41) connecting external surface of door lock (c4 L 65-c5L 15)

(Re: cl 13) bolt 41 attached to front surface and side door (c4 L 65-c5L 15)

(Re: cl 14) bolt attached to door through bracket (57)

(Re: cl 15) bolt supporting bracket connected to door by fasteners (the screws)

(Re: cl 21) lock module locks when door closed (c5L 6-15, spring biased).

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(Re: cl 27, 44) attaching a lock module to a refrigerator, placing a medical item in the interior of the refrigerator, storing data associated with the medical item, imputing medical item type, determining type of medical item in interior, generating signal determinative that a medical item is stored in the interior, enabling access to the interior of the computer (col. 3 L 1-16; col. 6 L 32-67; Fig. 1, #25);

(Re: cl 28) attaching lock to exterior of a body and a bolt supporting bracket to an exterior of the door (attached via screws)

(Re: cl 29) attaching bolt supporting bracket to exterior with at least one fastener and a covering fastener with a cover (c4 L 65-c5L 15)

(Re: cl 31) placing medical items in plurality of storage locations, at least one in the interior and at least one exterior and storing data representative of the medical items stored

(Re: cl32) the items are placed in the storage location in the interior and a second item is placed in the other locations (col. 3 L 1-16; col. 6 L 32-67; Fig. 1, #25)

(Re: cl 33) other location is in dispenser, inputting the type of item stored, determining that the second type of medical item is stored in dispenser, generating a second signal responsive to the determination second type is in dispenser (col. 3 L 1-16; col. 6 L 32-67; Fig. 1, #25)

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(Re: cl 39) manually actuating the unlocking mechanism and accessing the interior (c4 L 65-c5L 15).

6. Claim 45 is rejected under 35 U.S.C. 102(b) as being anticipated by Pearson '232. Pearson '232 discloses: a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 4 L 60-col. 5 L 5 with col. 6 L 18-23); the interface includes an input device (col. 53 L 5-20); a lock in operative connection with the computer, the lock is responsive to the computer (col. 3 L 22-38); the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item (col. 4 L 33-49), the computer operative to output a signal which changes the lock (col. 5 L 1-8) the computer is operative responsive to input of the item indicia to unlock the module (col. 6 L 6-18); computer is operative to the open signal to change the lock module to the locked condition (col. 6 L 47-56).

7. Claim 46 is rejected under 35 U.S.C. 102(e) as being anticipated by Higham '456. Higham '456 discloses: (base claim) a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 13 L 30-41); the interface includes an input device (col. 13 L 11-40; col. 10 L 46-53); a lock in operative connection with the computer, the lock is responsive to the computer (col. 10 L 11-29); the input device of the interface

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corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item (col. 13 L 11-30), the computer operative to output a signal which changes the lock (col. 13 L 11-30) the computer is operative responsive to input of the item indicia to unlock the module (col. 13 L 11-30); computer is operative to the open signal to change the lock module to the locked condition (col. 14 L 40-45);

(re:cl 46) the lock comprises a visual indicator (col. 11 L 41-65).

8. Claim 45 is rejected under 35 U.S.C. 102(b) as being anticipated by Colson, Jr. et al. '297. Colson, Jr. et al. '297 discloses: a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users, the interface includes an input device, a lock in operative connection with the computer, the lock is responsive to the computer, the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item, the computer operative to output a signal which changes the lock the computer is operative responsive to input of the item indicia to unlock the module, computer is operative to the open signal to change the lock module to the locked condition (col. 4 L 39-53).

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Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-3 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavigue et al.. Lavigue et al. discloses the elements previously discussed and further discloses: (Re: cl 2) a visual indicator proximate the lock (col. 11 L 3-43) ; the lock has a solenoid (col. 7 L 24-26). It would have been obvious to place the visual indicator on the lock as a matter of design choice because proximate rather than precise mounting location of a visual indicator is sufficient to indicate to the user the identification of the location of the lock corresponds with the compartment(s) and the status of the lock corresponds with the compartment access commands from the computer. The examiner takes official notice that the use of permanent magnets in solenoids is well known. It would have been obvious to make the solenoid with a permanent magnet because such a construction averts the need for plural windings.

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As per applicant's challenge of permanent magnet solenoids not being well known in the dispensing art, the examiner cites in rebuttal Nemoto (abstract), Keskin et al.(abstract), Tabata (abstract).

11. Claims 46-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higham et al. '456. Higham et al discloses the elements previously disclosed and further discloses: (re:cl 47) the lock comprises a door sensor, the door sensor is operative to generate an open signal responsive to opening the door (col. 11 L 23-41).

Higham et al '456 impliedly suggests the computer is operative responsive to the open signal to change the lock to the locked condition whenever the door is closed (col. 10 L 11-29; col. 13 L 44-59). As the processor of Higham et al '456 only permits one door open a time and the button opening embodiment necessitates a button being pressed before opening, it is suggested that all doors will be locked upon closure. It would have been obvious for the processor of Higham et al '456 to lock the door upon closure to avoid the confusion prone with multiple drawers open as suggested and taught by Higham et al '456.

12. Claims 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colson Jr., et al. '297. Colson Jr, et al. discloses the elements previously disclosed and further discloses:

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(re: cl 46) the lock comprises a visual indicator illuminating the region of the store medication item (col. 3 L 10-16). It would have been obvious for Colson Jr. et al. to modify the illumination to a visual indicator on released lock because such an indication can lead a user to a desired and open receptacle.

13. Claims 1, 3, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavigue et al. in view of Aten et al. as in paper number 8 as are newly added claims 45 and 47. Lavigue et al. discloses the elements previously disclosed and further discloses: the lock has a solenoid (col. 7 L 24-26). It would have been obvious to make the refrigerated dispenser of Lavigue et al. with a solenoid having a permanent magnet because a construction averts the need for plural windings as taught by Aten et al. (col. 9 L 1-30).

14. Claims 1-3 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colson, Jr. et al. '450 in view of Lavigne et al. Colson, Jr. et al. '450 discloses the elements previously disclosed and further discloses: a latching device for selectively maintaining the lock module in the locked and unlocked conditions (col. 5 L 6-16 ; col. 8 L 24-30; col. 8 L 58-59); visual indicators corresponding to each compartment which is unlocked by the locks (col. 7 L 35-46). Colson, Jr. et al. '450 does not disclose: a door sensor; door is operative to generate an open signal responsive to the door opening, the visual indicator is located on the lock. Lavigne et al. discloses a door sensor with the door operative

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to generate an open signal responsive to the door opening. It would have been obvious to substitute location of the visual indicator to the lock as a matter of design choice because proximate placement of a visual indicator is sufficient to indicate to the user the location of the compartment(s) and the status of the lock corresponds with the compartment access commands from the computer (col. 6 L 47-56; col. 7L 10-35). It would have been obvious to use a sensor to detect the opening of the door as a means of saving power and recording removal of the item as taught by Colson, Jr. et al. '450.

15. Claims 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blechl in view of Weinberger. Blechl discloses: (re cl 45) a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 4 L 20-38); the interface includes an input device (col. 4 L 39-50); a lock in operative connection with the computer, the lock is responsive to the computer (col. 4 L 39-50); the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item (col. 4 L 39-50), the computer operative to output a signal which changes the lock (col. 9 L 44-55) the computer is operative responsive to input of the item indicia to unlock the module (col. 9 L 36-55);

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computer is operative to the open signal to change the lock module to the locked condition (col. 4 L 39-55).

Weinberger discloses any claimed elements not explicitly taught by Blechl including:

(re:cl 46) the lock comprises a visual indicator (col. 7 L 13-34) ;

(re:cl 47) the lock comprises a door sensor, the door sensor is operative to generate an open signal responsive to opening the door, the computer is operative responsive to the open signal to change the lock to the locked condition whenever the door is closed (col. 13 L 20-30).

It would have been obvious for Blechl to include a visual indicator as a part of a lock module because a visual signal can direct the user to the correct door/drawer as taught by Weinberger. It would have been obvious for Blechl to have the computer to lock the door responsive to a sensor indicating door closure because locking the door can reduce unauthorized access as taught by Weinberger.

16. Claims 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colson, Jr. et al. '297 in view of Lavigne et al.. Colson, Jr. et al. '450 discloses the elements previously disclosed and further discloses: a latching device for selectively maintaining the lock module in the locked and unlocked conditions (col. 5 L 6-16 ; col. 8 L 24-30; col. 8 L 58-59); visual indicators corresponding to each compartment which is unlocked by the locks (col. 7 L 35-46). Colson, Jr. et

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al. '297 does not disclose: a door sensor; door is operative to generate an open signal responsive to the door opening, the visual indicator is located on the lock. Lavigne et al. discloses a door sensor with the door operative to generate an open signal responsive to the door opening. It would have been obvious to move the visual indicator corresponding to the lock as a matter of design choice because placing the visual indicator proximate the source is sufficient to indicate to the user the location of the compartment(s) thereby reducing dispensing errors and the status of the lock as exemplified corresponds with the compartment access commands from the computer (col. 6 L 47-56; col. 7L 10-35). It would have been obvious to use a sensor to detect the opening of the door as a means of saving power and recording removal of the item as taught by Colson, Jr. et al. '297.

17. Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavigne et in view of Engleson et al. wherein Lavigne et al. discloses the elements previously discussed and Engleson et al. discloses any elements not explicitly taught by Lavigne et al. including:

(Re: cl 16) reading device for reading item indicia (90)

(Re: cl17) refrigerator includes machine readable indicia (c6 L 14-25)

(Re: cl18) report having machine readable indicia item indicia by reading machine readable indicia (c12 L 45-65)

(Re: cl19) printer for generating a report (c9 L 30-34; c6 L 14-25)

(Re: cl20) at least one machine readable indicia (c6 L 14-25)

(Re: cl 35) reading a bar code scanner (c6 L 14-25).

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It would have been obvious at the time of the invention for Lavigne et al. to use a reader device and indicia on a dispenser to automatically input what medication is being removed and from where items are being removed as taught by Engleson et al. It would have been obvious at the time of the invention for Lavigne et al. to generate a report for tracking patient care and optimize treatment and to generate machine readable indicia to easily identify the report as taught by Engleson et al.

18. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colson, Jr. et al. '450 in view of Iwamoto et al. wherein Colson, Jr. et al. '450 discloses the elements previously discussed and Iwamoto et al. discloses any elements not explicitly taught by Colson, Jr. et al. '450 including:

(Re: cl 4) lock has manual unlocking mechanism armed to unlock when the lock is enabled

(Re: cl 5) lock module has a movable lever (34), catch (33), pawl (32a)

(Re: cl 6) lever 4 pivots, and is engaged by a solenoid (c4 L 4-9)

(Re: cl 7) catch has tapered step on lever (33a)

(Re: cl 8) unlocking mechanism includes cylinder and projection for engaging lever (8)

(Re: cl 40) first mechanism engages lever on first side of pivot (c4 L 1-21).

It would have been obvious at the time of the invention for Colson, Jr. et al. '450 to substitute a lock constructed with solenoid activated pivoting lever, catch with taper step, and pawl to positive release electrically activated of the solenoid triggering the latch release of the door as taught by Iwamoto et al..

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It would have been obvious at the time of the invention for Colson, Jr. et al. '450 to include a cylinder as backup for electrical failure as taught by Iwamoto et al..

19. Claims 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Colson, Jr. et al. '450 in view of Warren wherein Colson, Jr. et al. '450 discloses the elements previously discussed and Warren discloses any elements not explicitly taught by Colson, Jr. et al. '450 including:

(Re: cl 23) lock module includes a retrofit assembly (116).

It would have been obvious at the time of the invention for Colson, Jr. et al. '450 to substitute its built in lock with a retrofit kit lock as retrofit locks can be placed on a unit after failure as taught by Warren.

20. Claims 9, 16-17, 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colson, Jr. et al. in view of Holmes '467 wherein Colson, Jr. et al. '450 discloses the elements previously discussed and Holmes '467 discloses any elements not explicitly taught by Colson, Jr. et al. '450 including:

(Re: cl 9) door opening sensor signaling data store (c 8L12-15)

(Re: cl 22) unlock condition has a timeout return to locked condition (c8 L25-30).

(Re: cl 16) reading device for reading item indicia (c6 L19-25)

(Re: cl 17) dispenser includes machine readable indicia (c6 L19-25)

(Re: cl 20) at least one machine readable indicia (c6 L19-25).

(Re: cl 34) labeling the dispenser with machine readable indicia, reading the indicia with a reading device (c6 L19-25)

(Re: cl 35) reading a bar code scanner (c6 L19-25).

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It would have been obvious at the time of the invention for Colson, Jr. et al. '450 to use a reader device and indicia on dispenser to automatically input what medication is being removed and from where items are being removed as taught by Holmes '467.

It would have been obvious at the time of the invention for Colson, Jr. et al. '450 to have a lock release timeout to secure contents from an apparent subsequently unattended dispenser as taught by Holmes '467.

21. Claims 9, 16-17, 20, 22 and 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavigne et al. in view of Holmes '467 wherein Lavigne et al. discloses the elements previously discussed and Holmes '467 discloses any elements not explicitly taught by Lavigne et al. including:

- (Re: cl 9) door opening sensor signaling data store (c 8L12-15)
- (Re: cl 22, 42) unlock condition has a timeout return to locked condition (c8 L25-30)
- (Re: cl 16) reading device for reading item indicia (c6 L19-25)
- (Re: cl 17) dispenser includes machine readable indicia (c6 L19-25)
- (Re: cl 20) at least one machine readable indicia (c6 L19-25).
- (Re: cl 34) labeling the dispenser with machine readable indicia, reading the indicia with a reading device (c6 L19-25)
- (Re: cl 35) reading a bar code scanner (c6 L19-25).

It would have been obvious at the time of the invention for Lavigne et al. to use a reader device and indicia on dispenser to automatically input what medication is being removed and from where items are being removed as taught by

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Holmes '467. It would have been obvious at the time of the invention for Lavigne et al. to have a lock release timeout to secure contents from an apparent subsequently unattended dispenser as taught by Holmes '467.

22. Claims 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Halvorson in view of McDonald '243.

Halvorson discloses:

(re cl 45) a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 4 L 20-38; col. 2 lines 37-61); the interface includes an input device (20); the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item (col. 3 line 47-column 4 line 32),

McDonald '243 discloses any claimed elements not explicitly taught by Halvorson including:

the computer operative to output a signal which changes the lock (40) the computer is operative responsive to input of the item indicia to unlock the module, computer is operative to the open signal to change the lock module (40) to the locked condition (col. 2 Lines 46-61).

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It would have been obvious for Halvorson to have the computer to lock the door responsive to a sensor indicating door closure because locking the door can reduce unauthorized access as taught by McDonald '243.

23. Claims 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halvorson in view of Weinberger. Halvorson discloses the elements previously discussed and further discloses:

(re cl 45) a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 4 L 20-38); the interface includes an input device (col. 4 L 39-50); the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item (col. 4 L 39-50).

Weinberger discloses any elements not explicitly taught by Halvorson including:

a lock in operative connection with the computer, the lock is responsive to the computer (col. 4 L 39-50); the computer operative to output a signal which changes the lock (col. 9 L 44-55) the computer is operative responsive to input of the item indicia to unlock the module (col. 9 L 36-55); computer is operative to the open signal to change the lock module to the locked condition (col. 4 L 39-55).

(re:cl 46) the lock comprises a visual indicator (col. 7 L 13-34) ;

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(re:cl 47) the lock comprises a door sensor, the door sensor is operative to generate an open signal responsive to opening the door, the computer is operative responsive to the open signal to change the lock to the locked condition whenever the door is closed (col. 13 L 20-30).

It would have been obvious for Halvorson to have the computer to lock the door responsive to a sensor indicating door closure because locking the door can reduce unauthorized access as taught by Weinberger. It would have been obvious for Halvorson to include a visual indicator as a part of a lock module because a visual signal can direct the user to the correct door/drawer as taught by Weinberger.

24. Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colson, Jr. et al. '450 in view of Gombrich et al. wherein Colson, Jr. et al. '450 discloses the elements previously discussed and Iwamoto et al. discloses any elements not explicitly taught by Colson, Jr. et al. '450 including:

(Re: cl 16) reading device for reading item indicia (c8 L 4-30)

(Re: cl 17) refrigerator includes machine readable indicia (c8 L 4-30)

(Re: cl 18) report having machine readable indicia item indicia by reading machine readable indicia (c8 L 4-30)

(Re: cl 19) printer for generating a report (c8 L 4-30)

(Re: cl 20) at least one machine readable indicia (c8 L 4-30)

(Re: cl 34) labeling the refrigerator with machine readable indicia, reading the indicia with a reading device (c8 L 4-30)

(Re: cl 35) reading a bar code scanner (c8 L 4-30).

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It would have been obvious at the time of the invention for Colson, Jr. et al. '450 to use a reader device and indicia on a dispenser to automatically input what medication is being removed and from where items are being removed as taught by Gombrich et al.

It would have been obvious at the time of the invention for Colson, Jr. et al. '450 to generate a report for tracking patient care and optimize treatment and to generate machine readable indicia to easily identify the report as taught by Gombrich et al.

25. Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavigne et al. in view of Engleson et al. wherein Lavigne et al. discloses the elements previously discussed and Iwamoto et al. discloses any elements not explicitly taught by Lavigne et al. including:

- (Re: cl 16) reading device for reading item indicia 90
- (Re: cl 17) refrigerator includes machine readable indicia (c6 L 14-25)
- (Re: cl 18) report having machine readable indicia item indicia by reading machine readable indicia (c12 L 45-65)
- (Re: cl 19) printer for generating a report (c9 L 30-34; c6 L 14-25)
- (Re: cl 20) at least one machine readable indicia (c6 L 14-25)
- (Re: cl 34) labeling the refrigerator with machine readable indicia, reading the indicia with a reading device (c6 L 14-25).

It would have been obvious at the time of the invention for Lavigne et al. to use a reader device and indicia on a dispenser to automatically input what medication is being removed and from where items are being removed as taught by

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Engleson et al. It would have been obvious at the time of the invention for Lavigne et al. to generate a report for tracking patient care and optimize treatment and to generate machine readable indicia to easily identify the report as taught by Engleson et al.

26. Claims 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavigne et in view of Iwamoto et al. wherein Lavigne et al. discloses the elements previously discussed as well as

(Re: cl 11) bolt goes through door (c3 L 38-50)

and Iwamoto et al. discloses any elements not explicitly taught by Lavigne et including:

(Re: cl 10) lock module has a movable lever (34), catch (33), pawl (32a) and lever is engaged by a solenoid (c4 L 4-9)

(Re: cl 4) lock has manual unlocking mechanism armed to unlock when the lock is enabled (C3 L 24-28)

(Re: cl5) lock module has a movable lever (34), catch (33), pawl (32a)

(Re: cl6) lever 4 pivots, and is engaged by a solenoid (c4 L 4-9)

(Re: cl7) catch has tapered step on lever (33a)

(Re: cl8) unlocking mechanism includes cylinder and projection for engaging lever (8)

(Re: cl 21) lock module locks when door closed (c3 L 25-31).

It would have been obvious at the time of the invention for Lavigne et al. to substitute a lock constructed with solenoid activated pivoting lever, catch with taper step, and pawl to positive release electrically activated of the solenoid triggering the latch release of the door as taught by Iwamoto et al..

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It would have been obvious at the time of the invention for Lavigne et al. to lock the door upon closer to secure contents as taught by Iwamoto et al..

27. Claims 12-15 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavigne et al. in view of Genest et al. wherein Lavigne et al. discloses the elements previously discussed and Genest et al. discloses any elements not explicitly taught by Lavigne et al. including:

(Re: cl 23) lock module includes a retrofit assembly (abstract-unitary self contained

(Re: cl 12) lock module mounted in support of external surface with bolt connecting external surface of door with lock (c9 L 22-30)

(Re: cl 13) bolt attached to front surface and side door (c10 L 48-69)

(Re: cl 14) bolt attached to door through bracket (c10 L 48-69)

(Re: cl 15) bolt supporting bracket connected to door by fasteners (c10 L 48-69)

It would have been obvious at the time of the invention for Lavigne et al. to substitute its built in lock with a retrofit kit lock as retrofit locks can be placed on a unit after failure as taught by Genest et al.. It would have been obvious at the time of the invention for Lavigne et al. to operationally attach the bolt to the front door as external mounting arrangement is easy to mount and does not reduce the amount of interior storage space consumed as taught by Genest et al..

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Response to Arguments

28. The applicant's voluminous arguments have been carefully considered by the examiner but are insufficient in overcoming the rejections in view of the prior art.

The Cited Art is Prior Art with Respect to the Claims on which Rejections were Asserted

The applicant attempts to rely upon a CIP priority to bring the priority date of previously rejected claim 24 and newly added claim 45 of the instant application to less than one year subsequent the publication date of the applied references. However the applicant is entitled to the priority date of a parent of a CIP only with respect to matter present in the parent application.

In sharp contrast to applicants assertion on page 26 of his brief, claim 24 is not similar in scope to claim 45. Claim 24 lacks elements the parent application does not have such as a lock module mounted to the exterior surface of the housing structure-so claim 24 does not benefit from the filing date of the parent application as claim 24 has elements not in the continuation chain of priority. As the refrigeration elements were not found in the parent of this CIP application, applicant is not entitled to benefit of the priority data of the parent application on those claims having the cooling unit. As such the 102(b) reference date status of the cited art has not been antedated. Demonstrating the presence of the elements of

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claim 45 in the parent application does not cure the absence of the elements of claim 24 from the priority chain. As previously stated by the Office on the November 7, 2000 advisory action, the presence of the element of claim 45 are not being disputed.

With respect to Colson, Jr et al. '450 applicant has merely attempted to swear behind the filing date of the reference and not the priority date of the reference. If applicant had been able to and had identified that his claimed subject matter had a priority date which would shift the reference to a 102(e) status, the applicant would need swear behind the priority date of the reference. The applicant has merely attempted to swear behind the 1994 filing date of the Colson, Jr. et al.'450 reference rather than the 1993 priority date of Colson, Jr. et al.'s parent application, Colson, Jr. et al. '297. Each claim has its own independent invention date, and a subsequently invented dependent claim does not inherit its base claim's invention date nor does it inherit its base claims chain of subject matter to an earlier application if that matter was not present in the earlier applications in the chain or priority. Colson, Jr. et al. improved upon its parent CIP application with its own refrigeration system, not an element necessary to antedate claim 45 and constitute a prior art reference. As applicant did not attempt to swear behind the priority date of Colson, Jr., et al. '297 he has not antedated Colson, Jr. et al. '450 as a reference to the no refrigeration claim 45.

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As applicant added the material of claim 24 to his application chain in the instant application, so claim 24 is not entitled to an earlier priority date than the filing date of the instant application. Therefore with respect to claim 24, the filing date of the application is the effective date in determination of the filing relative to 102(b) references. As the applied references directed at claim 24 published more than a year before applicant's filing date, the applied references have a 102(b) or 103(a)/102(b) prior art basis, so the 131 affidavit may not be used to antedate those references.

As Colson, Jr. et al. is a 102(b) reference against the instant application's filing date, a 131 affidavit is moot regarding claim 24. Applicant's assertion on page 28 of each element of claim 24 having support in parent patent 5,790,409 is clearly misleading, as no refrigeration is present in the parent application, nor is there an external lock mounting system. Applicant added his mounting of the lock exterior to the housing in the instant application.

Pearson '232 gains the benefit of the filing date of its CIP ancestor case with respect to matter disclosed in the Pearson '029. The elements of the broad independent claim 45 were disclosed

Dependent claims such as 46-47 do not inherit the priority and invention dates of their base claims merely because applicant wrote the claims as dependent claims rather than independent claims.

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Applicant or co-inventors not entitled to inherit the invention date of a claim that happens to be placed in the same application.

Whichever of the instant application's five inventor(s) may have subsequently invented the subject of each respective claim depending from claims 24 and 45-whether from independent conception or from subsequently taking R. Michael McGrady's work regarding claims 24 and 45 and subsequently building upon that-neither takes the affiant's conception date as a possible co-inventor of the claimed subject matter nor benefit from the affiant's conception date by their having their respective claim(s) in the same application as applicant McGrady's two claims. Each claim has its own conception date. None of the other inventors in the instant application have a 131 affidavit in the case antedating any of their respective claims, including the lead inventor of the instant application. Nor do the claims that fail to depend from claims 24 and 45 gain the benefit of the affiant's conception date. Applicant's argument that it would have been obvious for one of his inventors to invent the subject of other claims in the application is ineffective as there is neither any evidence that inventor of each claim conceived the claimed subject matter before the effective date of the applied references nor is there even any evidence that the inventors of each of the remaining claims in the case were not conceived independent of the affiant.

Rejections under 35 USC 112 second paragraph

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(Re: cl 27) There is insufficient basis in the claim(s) for the limitation “the determination that the medical item is stored in the interior area”, the is not an inherent determination that an item is not inherently stored in interior.

(Re: cl 31) Applicant has specified “the other location” which is specifying one location, not a breadth attempt as applicant now asserts in the brief. If the “other locations” are relative the interior of the storage locations, applicant should have identified the interior.

(Re: cl 36) It is not apparent how the door controls the access-is it locked unless authorized, is it mandating recording who accesses the door.

Rejections under 35 USC 103

The cited anticipatory references contain the elements applicant alleges they lack

Lavigne

Lavigne requires the authorized operator needs a key to access the medicaments.

Colson '450

Colson teaches identifying the user authorized to administer the medicament and updating the record.

Pearson '232

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A nurse must be an authorized user to enter a password that accesses the system. A plurality of differing passwords are not claimed, an authorized user.

Higham

A wrong patient would not be an authorized user of the medical items.

Colson '297

Colson '297 discloses store of identifies users who are authorized.

Rejections under 35 USC 102

Applicant has admitted via his restriction petition that his invention groups are not patentably distinct, so should the claims of be obviated upon any affirmation of the rejections claims of elected group I.

Lavigne

The visual indicator is proximate the lock, the placement is for leading the caregiver to the indicated item, so proximate placement of the visual indicator proximate the lock obviates the arbitrary design choice location applicant chose-it still leads the user to the location of the item.

Applicant has alleged absence of some elements from certain references. Those elements are present and discussion of those elements follows.

Higham et al.

The locking of the drawers is under computer control, and the visual indicators are proximate the locks, easily placeable in the locks. One of ordinary

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skill would have not difficulty in arbitrarily moving the visual indicator to any location indicator where the contents are located.

Colson '297

Colson '297 discloses the visual indicator proximate the lock.

Lavigne and Aten

Aten teaches a solenoid with plural windings. Applicant's contention that magnets in solenoids is novel is actually contrary to the norm, most solenoids have magnets and Aten supplies the evidence so typical of applicant's efforts to gain patent claims by claiming elements so well known as to be unspoken and hence unspoken even though likely present in Lavigne.'

Colson '450 and Lavigne

Lavigne teaches placing a visual indicator proximate a locking device (latching).

Colson '297 and Lavigne

There were no features absent from Colson '297 in the independent claims- Lavigne was brought into the 103 rejection for the claims for its teachings on the dependent claims. As Colson '297 had the elements claimed, Lavigne's significance remains for the dependent claims. If a reference in a 103 when a rejection has been chronologically overcome in a 103 rejection, the rejection still

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remains if the remaining references can teach the elements the rejection on their own.

Blechl and Weinberger

In contrast to applicant's assertion that Blechl is limited its the preferred embodiment using a card, Blechl expressly states other user authorization systems including passwords and personal computers may be to verify the authorized users before dispensing (c8 L 60-68).

Lavigne and Engleson

Lavigne teaches the refrigeration. Engleson teaches reading the medical items Lavigne lacks such that one of ordinary skill in the art would readily know how to apply the reader to read the medical items.

Colson '450 and Iwamoto

Iwamoto teaches the use of a lock under computer control.

Colson '450 and Gombrich

The bar code reader and indicia are machine readable.

Lavigne and Iwamoto

The lock is a modular component readily usable on the refrigerated device.

Lavigne and Genest

The reader 12 is clearly machine readable indicia.

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Colson '450 and Holmes

Holmes teaches a door sensor responsive to a door opening. Colson '450 would have no difficulty applying the teachings of Holmes to a door that is on a refrigerator. The readers of Holmes are machine readable and describe their use in reading drawers and the drawer medical items.

Colson '450 and Warrren

Warren teaches placing a lock module to the exterior surface of a housing. Colson '450 would have no difficulty applying the teachings of Colson '450 to a door that is on a refrigerator.

Lavigne and Holmes

Holmes teaches locking the door after sensing open for a period time. Artisans of ordinary skill would readily extend the door locking teachings to of Holmes to the refrigerator of Lavignee et al..

Colson '450 and Gombrich

The bar code reader and indicia are machine readable.

Lavigne and Iwamoto

The lock is a modular component readily usable on the refrigerated device.

Lavigne and Genest

The reader 12 is clearly machine for machine readable indicia.

Halvorson and McDonald '243

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Halvorson discloses identifying the particular user accessing the dispenser. As the Board ruled in the related case, for identifying an authorized user is an obvious variation for Halvorson in its identified user disclosed. McDonald et al. teaches limiting access to authorized users. The combined teachings of Halvorson expressly teach limiting accesses to an identified authorized user. Unlocking the lock is prerequisite to opening the drawer, so unlocking the draw is taught inherently taught.

Halvorson and Weinberger.

The indicator light is clearly a visual indicator and is clearly disclosed by Weinberger in the cite. The sensor unit senses the closing and locks preventing access if the confirmatory entry is omitted.

Excessive Brief Size

A Petition requiring compliance with FRAP 32(G) 28 U.S.C. Appendix on brief size as triggered by the Administrative Procedures Act was overruled since 37 CFR and 35 USC contain no express brief size limit in ex parte proceedings. The petition did not address, presumably in deference to a Board determination, whether the Administrative Procedures Act 5 USC Section 559 provides a catch-all safety-net triggering the Rules of Appellate Procedure in the absence of an rule on point precluding individuals from gaining extra benefit of process by tilting the playing field and obscuring issues by pursuing a course to overwhelm with volume

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as a means of compensating and gain allowance on claims not otherwise meriting patentability.

The Administrative Procedures Act were designed to create uniformity with Federal Agencies, FRAP 28(G) was designed to preclude parties from surreptitiously gaining an unfair procedural advantage. The Board ought resolve this matter of first impression before the Board and preclude applicant's design to remove matter from the public domain through obscuration and overwhelm.

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For the above reasons, it is believed that the rejections should be sustained.

Examiner Certifies Preceding Word Count: 8728; Line Count: 875.

Respectfully submitted,

Michael E. Butler

Michael E. Butler
9/7/04

Donald P. Walsh 9/7/04
DONALD P. WALSH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

conferees:

Michael Butler *MEB*
Donald P. Walsh *DW*
Khoi Tran *KT*
Joseph Thomas *J.T.*

United States Patent and Trademark Office
Washington, D.C. 20231
Art Unit 3653